UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE ANNUITY, WELFARE AND APPRENTICESHIP SKILL IMPROVEMENT & SAFETY FUNDS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 15, 15A, 15C & 15D, AFL-CIO, by their Trustees James T. Callahan, Thomas A. Callahan, Michael Salgo, and William Tyson; CENTRAL PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, by its Chief Executive Officer Joseph Shelton; and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 15, 15A, 15C & 15D, AFL-CIO by its President and Business Manager Thomas A. Callahan,

Plaintiffs,

-against-

MIRMAX ENGINEERING, P.C.,

Defendant.

MEMORANDUM AND ORDER

Case No. 22-CV-2870 (FB) (TAM)

Appearances:
For the Plaintiff:
JAMES MICHAEL STEINBERG
Brady McGuire & Steinberg, P.C.
303 South Broadway, Suite 234
Tarrytown, NY 10591

BLOCK, Senior District Judge:

On December 2, 2022, Magistrate Judge Taryn A. Merkl issued a Report and Recommendation ("R&R") recommending that Plaintiffs' motion for a default judgment be granted. Plaintiffs filed this action against Defendant Mirmax Engineering, P.C. on May 17, 2022, seeking delinquent benefit contributions and related relief under Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act ("ERISA"), *see* 29 U.S.C. §§ 1132(a)(3), 1145, and Section 301(a) of the Labor Management Relations Act ("LMRA"), *see* 29 U.S.C. § 185. Magistrate Merkl found that all service and procedural requirements had been satisfied and that the allegations set forth in Plaintiffs' Complaint stated valid claims sufficient for this Court to enter a default judgment.

Accordingly, Magistrate Merkl recommended awarding Plaintiffs the following damages: (1) $8,618.40 in unpaid ERISA contributions; (2) $866.40 in unpaid non-ERISA contributions, including supplemental dues and political action committee payments; (3) prejudgment interest for ERISA contributions amounting to $2,667.54 plus $1.61 daily accruing between the date of the R&R and the date the Clerk of Court enters final judgment; (4) prejudgment interest for non-ERISA contributions amounting to $369.37, plus $0.21 daily accruing between the date of the R&R and the date the Clerk of Court enters final judgment; (5) $1,096.68 in liquidated damages for Defendant's unpaid ERISA contributions; (6) $2,357.50 in

attorney's fees; (7) $522 in costs; (8) 2,915.85 in audit fees; and (9) post-judgment interest at the rate set forth in 28 U.S.C. § 1961 on all sums awarded from the date judgment is entered to the date of payment. The total award recommended by Magistrate Merkl equals $19,413.74, plus prejudgment interest at a rate of $1.82 from December 2, 2022, through the date the Clerk of Court enters final judgment, as well as post-judgment interest accruing at the rate set forth in 28 U.S.C. § 1961 on the total sum awarded on the date of judgment, accruing through the date of payment.

Magistrate Merkl's R&R stated that failure to object within fourteen days of the date of the R&R waives the right to appeal, precluding further review either by this Court or the Court of Appeals. No objections were filed. If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without de novo review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) ("Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision.") (internal citations omitted). The Court will excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears here.

Accordingly, the Court adopts the R&R without de novo review and directs the Clerk to enter judgment in accordance with the R&R.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
December 22, 2022